

Public Notice – Environmental Regulation

Notice of action: The State Air Pollution Control Board is considering the adoption, of a regulation implementing the federal Clean Air Interstate Rule (Revision E05). A regulation is a general rule governing people's rights or conduct that is upheld by a state agency. If adopted, the Commonwealth intends to submit the regulation or portion thereof as a revision to its State Implementation Plan in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this regulatory action is as follows: Emissions Trading (9 VAC 5 Chapter 140).

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on (i) the proposal, (ii) the costs and benefits of the proposal, (iii) effects of the proposal on farm and forest land preservation, and (iv) impacts of the proposal on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. There is new legislation (Chapters 867 and 920, 2006 Acts of Assembly) that will affect the content of the rules. The board is also seeking comment on the changes necessary to comply with the new legislation; these changes will be made in the final stage of the regulatory adoption process.

Public comment period: July 10, 2006 to September 8, 2006.

Public hearing: First floor conference room, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 10:00 on August 24, 2006. A question and answer period will be held one half hour prior to the beginning of the public hearing at each location.

Public comment stage: Notice of Public Comment.

Description of proposal: This regulatory action encompasses the establishment of three new parts to 9 VAC 5-140; each of which is addressed below:

Part II establishes a NO_x Annual Trading Program which addresses the following substantive provisions: permitting, allowance methodology, monitoring, banking, compliance supplement pool, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's NO_x annual budgets are 36,074 tons in 2009 through 2014 and 30,062 tons in 2015 and thereafter.

Beginning January 1, 2009, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the NO_x emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The NO_x allocations are determined through a methodology based upon heat input for existing units and

electrical output for new units. January 1, 2006 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of NOx generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e. for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt-in to the program.

A compliance supplement pool (5,134 tons) is provided for sources that generate early reduction credits or to avoid an "undue risk to the reliability of electricity." The allowances from the pool are valid for only one year (2009) and cannot be banked after that one-year period.

Part III establishes a NOx Ozone Season Trading Program which addresses the following substantive provisions: permitting, allowance methodology, monitoring, banking, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's NOx ozone season budgets for electric generating units are 15,994 tons in 2009 through 2014 and 13,328 tons in 2015 and thereafter. Virginia's NOx ozone season budget for non-electric generating units is 3,840 tons in 2009 and thereafter.

Beginning May 1, 2009, electric generating units with a nameplate capacity greater than 25 MWe and non-electric generating units above 250 mmBtu will be subject to the provisions of this part. To accommodate the NOx emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per season) during the summer months of May 1 through September 30, otherwise known as the control period. The NOx allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2006 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of NOx generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e. for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt-in to the program.

Part IV establishes a SO₂ Annual Trading Program which addresses the following substantive provisions: permitting, monitoring, banking, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's SO₂ annual budgets are 63,478 tons in 2010 through 2014 and 44,435 tons in 2015 and thereafter.

Beginning January 1, 2010, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the SO₂ emissions from the affected units, the units have been allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The SO₂ allocations are carried over from the Acid Rain Program and are valid indefinitely, except the value of the allowances is reduced over time. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of SO₂ generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e. for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt-in to the program.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP except for the provisions relating to nonattainment areas found in 9 VAC 5-140-1060 H, I and J of the NO_x Annual Trading Program and 9 VAC 5-140-2060 H, I and J of the NO_x Ozone Season Trading Program. These provisions may be submitted at a later time as may be needed to accommodate attainment demonstrations and plans for the affected areas.

Locality particularly affected: Except for nonattainment areas, there is no locality which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other localities. Current nonattainment areas for ozone and particulate matter are as follows: Arlington County, Fairfax County,

Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

How to comment: The DEQ accepts written comments by e-mail, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5:00 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record.

How a decision is made: After comments have been considered, the board will make the final decision. There is new legislation (Chapters 867 and 920, 2006 Acts of Assembly) that will affect the content of the rules. Changes necessary to comply with the new legislation will be made in the final stage of the regulatory adoption process. Citizens that submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review regulation documents: The proposal and an analysis conducted by DEQ (including a statement of purpose, a statement of estimated impacts and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) are available on the Town Hall web site (www.townhall.virginia.gov) and the DEQ Air Public Notices for Regulations web site (<http://www.deq.virginia.gov/air/permitting/regnotes.htm>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations: (1) DEQ Main Street Office, 8th Floor, 629 E. Main Street, Richmond, Virginia, (804) 698-4070, (2) the Southwest Regional Office, Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia, (540) 676-4800, (3) the West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, Virginia, (540) 562-6700, (4) the South Central Regional Office, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, Virginia, (804) 582-5120, (5) the Valley Regional Office, Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia, (540) 574-7800, (6) the Fredericksburg Satellite Office, Department of Environmental Quality, 806 Westwood Office Park, Fredericksburg, Virginia, (540) 899-4600, (7) the Piedmont Regional Office, Department of Environmental Quality, 4949-A, Cox Road, Glen Allen, Virginia, (804) 527-5020, (8) the Northern Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, (703) 583-3800, and (9) the Tidewater Regional Office, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia, (757) 518-2000.

Contact for public comments, document requests and additional information:

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